IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 1352 OF 2006

Neelkant K.Tupe and Ors. .....Petitioners.

vs.

Anandrao B.Tupe and anr. .....Respondents.

P.S.Dani for the petitioners.

V.S.Gokhale, AGP for respondents.

S.M.Sabrad for Respondent no.1.

CORAM: S.C.DHARMADHIKARI, J.

DATED: 9th March, 2007.

P.C.

1. The petitioner was aggrieved by the action of the Deputy Charity Commissioner in proposing to re-call/review his order on the Change Report. In the submission of the Petitioner,the Deputy Charity Commissioner has no such power in law.

2. However, Mr.Sabrad appearing for the First Respondent, states that the Review Petition has been allowed by the Charity Commissioner on 21.7.2006 and the present Petitioner has preferred an Appeal against the said order to the Joint Charity Commissioner, which is pending.

3. In my view, in the light of these subsequent developments,nothing survives in this petition and it has been rendered infructuous. It is accordingly disposed off. However, all contentions of the Petitioner including on the maintainability of the Review Petition and jurisdiction of the Deputy Charity Commissioner to review his own order on the earlier Change Report are kept open for being agitated in the pending Appeal or in appropriate proceedings. A copy of the order passed on the Review Application is taken on record and marked ‘X’ for identification. It is in the light of this, that the above order has been passed.

4. Before parting, my attention is invited by

both sides to certain observations in paras 4 and 5 of the order passed by Deputy Charity Commissioner, a copy of which is taken on record. These paras read thus :-

> "4. Presently appearing Advocate Y.G.Pawar, B.Com. LL.B., Opp.Sugandha Lawns, Ganesh Garden, Flat No.10, First Floor, Survey No.678, Bibwewadi, Pune 411 037, along with earlier Advocate Aglave, have filed their say/reply on behalf of original applicant which displays their lack of legal knowledge incorrect & immature concepts about the substantive Law of Tursts as well as the procedural aspects.
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> 5. Of course, one can be left in perfect delusion or even pleased to remain in disguise of delusion, so as to mislead only on the basis of civil customs and conventions, unless he

reads or has gone through this S22A having novel, unimmaginable, distinct and different provision, contrary to or against the publically known only hear-say concepts of C.P.C. This provision empowers the authority to hold further inquiry regarding left out subject matter. It is under the exercise of this power the undersigned authority had postponed effect and abstained from taking entry of the disputed charge reports within appeal period, whom the Other Side, admittedly holding the office and functioning as trustee came to object the change report. It is a matter of record open to see from CR/just the judgement that the RTs have purposely and knowingly not made the objector/Other side and his team party to the change report. They shown all the six proceedings as uncontested and got those accepted/allowed, without

notice and knowledge to the other side."

5. It is unfortunate that time and again attention of Presiding Officers has to be invited to the following observations of the Supreme Court in the case of State of Uttar Pradesh v. Mohammad Naim reported in (AIR 1964 SC 703), it was held as follows :

> ". If there is one principle of cardinal importance in the administration of justice, it is this the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time, it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before Courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record

> bearing on that conduct justifying the remarks and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

6. Judicial officers should refrain from making strong observations and pass uncalled for and sweeping remarks so also make adverse comments on the conduct of Advocates and parties. It is expected of the judicial officers to observe utmost restraint so also sobriety and reserve. Judicial officers should not involve himself in matters which are not necessary and essential for a decision or judgment. That apart, it is the Judges from whom the litigant expects justice and, therefore his conduct is of utmost importance as far as, proceedings in court of law are concerned.

7. I am making these observations with some degree of anguish and pain, inasmuch as, I had an occasion to scrutinise the legality and validity of the orders passed by Mr.M.A.Kulkarni,

Deputy Charity Commissioner, Pune on number of occasions. I am constrained to observe that his judgments are full of comments and remarks of the above nature and lack sobriety and restraint. It is, therefore, necessary that his attention is invited to this aspect of the matter. Therefore, a copy of this order be forwarded to the Registrar General of this court for necessary action.

sd/-

(S.C.Dharmadhikari, J)